

**Remarks**

This Application has been carefully reviewed in light of the Final Office Action mailed July 11, 2007. Applicant appreciates the Examiner's further consideration of the Application. Applicant believes all claims are allowable over the Examiner's rejections without amendment and respectfully provides the following remarks. Applicant respectfully requests reconsideration and allowance of all pending claims.

**I. The Claims are Allowable over the Proposed *Sockut-Barry* Combination**

The Examiner rejects Claims 1-4 and 12-20 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 5,721,915 to Sockut et al. ("*Sockut*") and U.S. Patent 5,517,641 to Barry, et al. ("*Barry*"). Applicant respectfully traverses these rejections. Applicant addresses each of independent Claims 1, 12, and 17.

**A. Independent Claim 1**

**1. The Proposed *Sockut-Barry* Combination Fails to Disclose, Teach, or Suggest Each and Every Limitation Recited in Claim 1**

"To establish *prima facie* obviousness of a claimed invention, *all the claim limitations* must be taught or suggested by the prior art." M.P.E.P. § 2143.03 (emphasis added); *see also In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). "*All words* in a claim must be considered in judging the patentability of that claim against the prior art." M.P.E.P. 2143.03 (emphasis added); *see also In re Wilson*, 424 F.2d 1382, 1385, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970).

At a minimum, the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest the database table recovery system recited in Claim 1 that is operable to:

- apply updates to the [retrieved] backup copy from a log associated with a database table; and
- restore the database table associated with the tablespace from the updated backup copy without recovering the tablespace.

As allegedly disclosing these limitations, the Examiner relies on various portions of *Sockut*. (Office Action at 3-4) Applicant respectfully disagrees that *Sockut* (whether considered alone or in combination with *Barry*) discloses, teaches, or suggests these limitations.

*Sockut* discloses online reorganization of a database, and particularly the interaction between the application of a log and maintenance of a table that maps record identifiers (RIDs) during online reorganization of the database. (*Sockut*, 1:12-16) The Examiner cites Col. 9, ll. 19-22, which mentions the phrase “a backup copy of the new table space.” Applicant assumes the Examiner is equating this disclosure in *Sockut* with the backup tablespace recited in Claim 1. Applicant will assume for the sake of argument only (and not by way of concession or agreement) that the Examiner’s proposed equation is possible.

It appears to Applicant that the Examiner merely located the terms backup and table space in *Sockut*, but that the other disclosures in *Sockut* that the Examiner apparently equates with other limitations in Claim 1 (some of which reference *the backup copy of the tablespace*) do not relate to this disclosure of the purported backup copy in *Sockut*. For example, the cited disclosure of the backup copy of the new table space in *Sockut* appears in a description of a method. (*See Sockut*, 7:50-9:62) However, nowhere does this series of steps appear to disclose, teach, or suggest a database table recovery system that is operable to “apply updates to [a retrieved] backup copy from a log associated with a database table” and “restore the database table associated with the tablespace from the updated backup copy without recovering the tablespace,” as recited in Claim 1.

With respect to the recitation in Claim 1 of a database table recovery system that is operable to “restore the database table associated with the tablespace from the updated backup copy without recovering the tablespace,” it is not entirely clear which particular portion of *Sockut* the Examiner relies upon as allegedly disclosing this particular limitation of Claim 1. In any event, one cited portion of *Sockut* merely discloses reorganization of a database. (*Sockut*, 1:21-22) According to another cited portion relating to a reorganization strategy called fuzzy reorganization, a reorganizer records a current relative byte address of a log (which, according to *Sockut*, is a sequence of entries in a file (a region of storage) recording the changes that occur in a database). (*See Sockut*, 1:63-2:6; Office Action at 2-3) According to *Sockut*, the reorganization copies data from an old (original) area for the table space to a new area for the table space in reorganized form. Concurrently, users can use the

DBMS's normal facilities to read and write the old area, and the DBMS uses its normal facilities to record the writing in a log. (*Sockut*, 2:6-11; Office Action at 2-3) The reorganizer then reads the log and applies it to the new area to bring the new area up to date. (*Sockut*, 2:11-12) However, nowhere do these cited portions disclose, teach, or suggest a database table recovery system that is operable to "restore the database table associated with the tablespace from the updated backup copy without recovering the tablespace," as recited in Claim 1.

The Examiner also cites Col. 3, l. 61 through Col. 4, l. 17 of *Sockut*. These cited portions appear to disclose how updates made during a reorganization of a database are applied to the reorganized database. However, nowhere does this cited portion appear to disclose, teach, or suggest a database table recovery system that is operable to "restore the database table associated with the tablespace from the updated backup copy without recovering the tablespace," as recited in Claim 1.

In response to Applicant's arguments from the previous Response, the Examiner now identifies Col. 9, ll. 19-32 of *Sockut*, which recite, in part, "[a]t step 516, a backup copy of the new table space of partition (as a basis for further recovery) is created." (Office Action at 9) Based on this teaching, the Examiner states, "Therefore, it is interpreted that *Sockut* does disclose the first two claim limitations of claim 1 and *Barry* discloses the other claim limitations of claim 1." (Office Action at 9) Applicant assumes that by "the first two limitations of claim 1" the Examiner is referring to the recited database table recovery system that is operable to "retrieve a backup copy of a tablespace" and "apply updates to the backup copy from a log associated with a database table." However, nowhere does the cited portion of *Sockut* disclose, teach, or suggest "apply[ing] updates to [a retrieved] backup copy from a log associated with a database table."

Additionally, in the substantive rejection of Claim 1 (*see* Office Action at 2-3), the the only limitation for which the Examiner relies on *Barry* is the limitation "a tablespace access system coupled to the table recovery system, the tablespace access system is operable to restrict access to the tablespace to read-only access," as recited in Claim 1. The Examiner

does not rely on *Barry* as disclosing “restor[ing] the database table associated with the tablespace from the updated backup copy without recovering the tablespace,” as the Examiner seems to imply in the above-referenced response to Applicant’s arguments. Applicant submits that neither the cited portion of *Sockut* nor *Barry* (which the Examiner has not cited for this limitation) discloses, teaches, or suggests “restor[ing] the database table associated with the tablespace from the updated backup copy without recovering the tablespace,” as recited in Claim 1.

Moreover, while the cited portion of *Sockut* (Col. 9, ll. 19-32) mentions creating a backup copy for “recoverability,” the balance of the cited portion appears to related to reorganizing a database (rather than recovering a database). Indeed, *Sockut* appears to be directed to *reorganizing* a database, rather than *recovering* a database. (See, e.g., *Sockut*, Abstract; Col. 1, ll. 11-15; Col. 3, l. 60 – Col. 4, l. 29; Col. 9, ll. 29-44) *Barry* also appears to relate to *reorganizing* rather than *recovering* a database.

The Examiner’s statement that “the Applicant’s are not reciting all of the claim limitations of claim 1 in the arguments” is not understood by Applicant. (Office Action at 9) Applicant’s are not obligated to recite each and every limitation recited in a claim when arguing the patentability of the claim. Respectfully, it is the Examiner’s burden to show that one or more references disclose, teach, or suggest each and every limitation in Applicant’s claim. “To establish *prima facie* obviousness of a claimed invention, ***all the claim limitations*** must be taught or suggested by the prior art.” M.P.E.P. § 2143.03 (emphasis added); see also *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Applicant is simply pointing out the perceived deficiencies in the Examiner’s rejection and is not required to reiterate each and every claim limitation to do so.

As another example, the Examiner acknowledges that *Sockut* fails to teach “a tablespace access system coupled to the table recovery system, the tablespace access system is operable to restrict access to the tablespace to read-only access,” as recited in Claim 1. (Office Action at 3) However, the Examiner argues that *Barry* teaches these limitations.

Whether or not the cited portions of *Barry* disclose, teach, or suggest “a tablespace access system coupled to the table recovery system, [wherein] the tablespace access system is operable to restrict access to the tablespace to read-only access,” as argued by the Examiner (and Applicant does not concede that *Barry* does disclose, teach, or suggest this element of Claim 1), Applicant demonstrates below that the Examiner has not provided the requisite teaching, suggestion, or motivation either in the cited references or in the knowledge generally available to one of ordinary skill in the art at the time of Applicant’s invention to combine these references in the manner the Examiner proposes.

For at least these reasons, the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest each and every limitation recited in independent Claim 1. Independent Claim 1 is allowable for at least this reason.

## **2. The Proposed *Sockut-Barry* Combination is Improper**

Applicant maintains that the Examiner has not provided a sufficient basis, either in the cited references or in the knowledge generally available to one of ordinary skill in the art at the time of Applicant’s invention to modify or combine *Sockut* with *Barry* in the manner the Examiner proposes. Applicant’s claims are allowable for at least this additional reason.

The Examiner states:

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a tablespace access system coupled to the table recovery system, [wherein] the tablespace access system is operable to restrict access to the tablespace to read-only access and in view of *Sockut*’s teachings in col. 8, lines 57-67, col. 9, lines 1-18 and lines 37-44 of database performance and to modify in *Sockut* because such a modification would allow *Sockut*’s system to have independent recovery of the data and indexes and a significant decrease in elapsed time since the log file updates are done for all objects in the database through the log file.

(Office Action at 3)

Applicant respectfully submits that the Examiner has not provided any support for the proposed basis that “such a modification would allow *Sockut*’s system to have independent

recovery of the data and indexes and a significant decrease in elapsed time since the log file updates are done for all objects in the database through the log file.”

Moreover, it is entirely unclear and unexplained how the cited portions in *Sockut* even relate to the teachings that the Examiner is combining. For example, even assuming for the sake of argument only that *Barry* discloses “a tablespace access system coupled to the database table recovery system, wherein the tablespace access system is operable to restrict access to the tablespace to read-only access,” as argued by the Examiner, it is entirely unclear why the alleged motivation of “allow[ing] Sockut’s system to have independent recovery of the data and indexes and a significant decrease in elapsed time since the log file updates are done for all objects in the database through the log file” would lead one of ordinary skill in the art at the time of Applicant’s invention to incorporate the teaching of “a tablespace access system coupled to the database table recovery system, wherein the tablespace access system is operable to restrict access to the tablespace to read-only access,” as purportedly taught in *Barry*, into the system of *Sockut*. In other words, it is not clear how the alleged advantage of “allow[ing] Sockut’s system to have independent recovery of the data and indexes and a significant decrease in elapsed time since the log file updates are done for all objects in the database through the log file” would even be achieved by modifying the system of *Sockut* to include “a tablespace access system coupled to the database table recovery system, wherein the tablespace access system is operable to restrict access to the tablespace to read-only access,” as purportedly taught by *Barry*.

Instead, it appears that the Examiner has merely argued that one of ordinary skill in the art at the time the invention was made *could have* modified *Sockut* to perform the acknowledged deficient limitations (a point which Applicant does not concede). However, it does not appear to Applicant that the Examiner has pointed to any portions of the cited references that would teach, suggest, or motivate one of ordinary skill in the art at the time of invention to actually incorporate “a tablespace access system coupled to the table recovery system, [] the tablespace access system [being] operable to restrict access to the tablespace to read-only access,” as recited in Claim 1, into the particular techniques disclosed in *Sockut* (*without using Applicant’s claims as a guide for doing so*). See M.P.E.P. § 2143.01(III)

(stating that the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination); *see also In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990). Most recently, this requirement has been reaffirmed in an official USPTO memorandum dated May 3, 2007 wherein the Deputy Commissioner for Patent Operations pointed to sections of *KSR v. Teleflex*, which recite, “it will be necessary . . . to determine whether there was an **apparent reason** to combine the known elements in the fashion claimed by the patent at issue.”<sup>1</sup> Applicant submits that the statements made by the Examiner does not provide a supported explanation as to: (1) why it would have been obvious to one of ordinary skill in the art at the time of Applicant’s invention (***without using Applicant’s claims as a guide***) to modify *Sockut* in the manner proposed by the Examiner; and (2) how one of ordinary skill in the art at the time of Applicant’s invention would have actually done so.

The Examiner states that the argument “is not persuasive because a suggestion/motivation need not be expressly stated in one or all of the references used to show obviousness.” (Office Action at 7) This is a position Applicant has never argued. Instead, Applicant stated that the Examiner had “not provided a sufficient teaching, suggestion, or motivation, ***either in the cited references or in the knowledge generally available to one of ordinary skill in the art at the time of Applicant’s invention*** to modify or combine *Sockut* with *Barry* in the manner the Examiner proposes.” (See Previous Response at 10)

Applicant respectfully submits that the Examiner’s attempt to combine *Sockut* with *Barry* appears to constitute the type of impermissible hindsight reconstruction of Applicant’s claims, using Applicant’s claims as a blueprint, that is specifically prohibited by the M.P.E.P. and governing Federal Circuit cases.

Accordingly, since the Examiner has not demonstrated the required teaching, suggestion, or motivation to combine *Sockut* and *Barry* in the manner the Examiner proposes, Applicant respectfully submits that the Examiner’s conclusions set forth in the Office Action

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<sup>1</sup> *KSR Int’l. Co v. Teleflex Inc.*, 550 U.S. \_\_\_, 82 U.S.P.Q.2d 1384 (2007) (emphasis added).

do not meet the requirements set forth in the M.P.E.P. and the governing Federal Circuit case law for demonstrating a *prima facie* case of obviousness. Applicant respectfully submits that the rejection must therefore be withdrawn.

For at least these reasons, Applicant respectfully submits that the proposed *Reitburg-Ryan* combination is improper. Independent Claim 1 and its dependent claims are allowable for at least this additional reason.

### **3. Conclusions with Respect to Claim 1**

For at least these reasons, Applicant respectfully submits that the Examiner has not established a *prima facie* case of obviousness based on the proposed *Sockut-Barry* combination with respect to independent Claim 1. Thus, for at least these reasons, Applicant respectfully requests reconsideration and allowance of independent Claim 1 and its dependent claims.

#### **B. Independent Claim 12**

##### **1. The Proposed *Sockut-Barry* Combination Fails to Disclose, Teach, or Suggest Each and Every Limitation Recited in Independent Claim 12**

At the outset, in response to Applicant's arguments from the previous Response, the Examiner states, "The same response to the argument for Independent claims 12 and 17 is considered to have been discussed above for claim 1." (Office Action at 10) However, Applicant made separate and different arguments for Claim 12 (as well as Claim 17). Claims 12 (and 17) recite at least certain limitations that are different than the limitations recited in Claim 1. Applicant respectfully submits that he is entitled to a response to those arguments in this Office Action. "Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and *answer the substance of it.*" M.P.E.P. ch. 707.07 (f) (emphasis added). Applicant respectfully submits that, for Claim 12, the Examiner did not take note of Applicant's specific arguments or answer the substance of those separate arguments.



Applicant respectfully submits that if the Examiner intends to maintain these rejections, the Examiner must withdraw the finality of the current Office Action because the Examiner did not respond to the substance of Applicant's arguments with respect to Claim 12. Applicant recognizes that the Examiner is undoubtedly responsible for the examination of a large number of applications, placing inordinate constraints on the Examiner's time; however, Applicant submits that he should not be penalized for this fact and is still entitled to an examination of this Application in compliance with all applicable rules and guidelines. Applicant respectfully requests that the Examiner address Applicant's arguments in the next Office Action if the Examiner does not change or withdraw the rejection or, more appropriately, issue a Notice of Allowance for all claims.

In any event, Applicant respectfully submits that the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest at least the following limitations recited in Claim 17:

- reading log records associated with a first database table of the one or more database tables;
- applying the log records to the backup copy without recovering the tablespace;
- building new table data pages from the backup copy;
- scanning the new table data pages for records of the first database table;
- and
- updating the first database table from the records.

For example, it appears that the Examiner acknowledges that *Sockut* does not teach an entire element of Claim 12 ("reading log records associated with a first database table of the one or more database tables [of the tablespace]"), but the Examiner concludes that it would have been obvious to modify *Sockut* to include this element of Claim 12. (*See* Office Action at 3-4) Applicant notes that in the rejection of Claim 12, the Examiner does not reference *Barry* as purportedly making up for this deficiency of *Sockut*, nor does the Examiner cite *Barry* as providing a purported teaching, suggestion, or motivation for modifying *Sockut* in the manner proposed by the Examiner. (Office Action at 3-4)<sup>2</sup> For at least those reasons

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<sup>2</sup> In fact, it is not entirely clear whether the rejection of Claim 12 (and various other claims, such as independent Claim 17) is based at all on *Barry* or is an obviousness rejection based solely on *Sockut*.

discussed below in Section I.B.2, Applicant respectfully submits that the Examiner's proposed modifications to *Sockut* are improper.

As another example, the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest "applying the log records to the backup copy without recovering the tablespace," as recited in Claim 12. At least because the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest "reading ***log records associated with a first database table*** of the one or more database tables," as recited in Claim 12 and as acknowledged by the Examiner, the proposed *Sockut-Barry* combination necessarily fails to disclose, teach, or suggest "applying ***the log records*** to the backup copy without recovering the tablespace," as recited in Claim 12.

As another example, the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest "building new table data pages from the backup copy," as recited in Claim 12. As allegedly disclosing these limitations, the Examiner cites the following statement from *Sockut*: If the log entry is an update from pointer to regular data record then proceed as follows. (Office Action at 4, citing, *Sockut* 14:66-67) However, nowhere does this statement disclose, teach, or suggest "building new table data pages from the backup copy," as recited in Claim 12. Indeed the statement does not even mention building anything, let alone building new table data pages from the backup copy (of the tablespace), as recited in Claim 12.

As another example, the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest "scanning the new table data pages for records of the first database table," as recited in Claim 12. As allegedly disclosing these limitations, the Examiner cites Col. 11, ll. 52-66 of *Sockut*. (Office Action at 4) While the cited portion of *Sockut* mentions the words "scan" or "scanning," nowhere does the cited portion appear to disclose, teach, or suggest "scanning ***the new table data pages for records of the first database table***," as recited in Claim 12. In particular, Applicant respectfully asks the Examiner where in this cited portion does *Sockut* disclose the new table data pages and that such new table data pages are scanned (and particularly that they are scanned for records of the first database table)?

As another example, the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest “updating the first database table from the records,” as recited in Claim 12. First, at least because the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest “scanning the new table data pages for records of the first database table,” as recited in Claim 12, the proposed *Sockut-Barry* combination necessarily fails to disclose, teach, or suggest “updating the first database table from *the records [records of the first database table for which the new table data pages were scanned]*,” as recited in Claim 12.

For at least these reasons, Applicant respectfully submits that the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest each and every limitation recited in independent Claim 12. Independent Claim 12 and its dependent claims are allowable for at least this reason.

## **2. The Proposed Modifications to *Sockut* are Improper**

Applicant respectfully submits that the Examiner has not demonstrated the requisite teaching, suggestion, or motivation, either in the cited references or in the knowledge generally available to one of ordinary skill in the art at the time of the invention for modifying *Sockut* in the manner proposed by the Examiner. Applicant reiterates the above-discussed heavy burden incumbent on the Examiner for demonstrating a *prima facie* case of obviousness.

With respect to the rejection of Claim 12 and the proposed modification of *Sockut*, the Examiner states:

Sockut failed to teach reading log records associated with a first database table in the one or more database tables, but it would have been obvious to one having ordinary skill in the art at the time the invention was made to read log records associated with a first table in the one or more tables and to modify in *Sockut* because such a modification would allow the data to be read and updated in the first table before it is copied to the new table/tables and a backup copy is made of the data pages.

(Office Action at 4)

Applicant respectfully submits that the Examiner has not provided any support for this proposed basis for modifying *Sockut*. It appears that the Examiner has merely argued that one of ordinary skill in the art at the time the invention was made *could have* modified *Sockut* to perform the acknowledged deficient limitations (a point which Applicant does not concede). However, it does not appear to Applicant that the Examiner has pointed to any portions of the cited references that would teach, suggest, or motivate one of ordinary skill in the art at the time of invention to actually incorporate “reading log records associated with a first database table in the one or more database tables,” as recited in Claim 12, into the particular techniques disclosed in *Sockut* (*without using Applicant’s claims as a guide for doing so*). See M.P.E.P. § 2143.01(III) (stating that the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination); see also *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990). In other words, the statements made by the Examiner does not provide a supported explanation as to: (1) why it would have been obvious to one of ordinary skill in the art at the time of Applicant’s invention to modify *Sockut* to incorporate “reading log records associated with a first database table in the one or more database tables,” as recited in Claim 1; and (2) how one of ordinary skill in the art at the time of Applicant’s invention would have actually done so.

There is certainly no reason to assume that one of ordinary skill in the art at the time of Applicant’s invention would have been motivated to make the proposed modifications to *Sockut*. Therefore, it certainly would not have been obvious to one of ordinary skill in the art at the time of invention *to even attempt* to, let alone *to actually*, modify *Sockut* in the manner proposed by the Examiner.<sup>3</sup> Applicant respectfully submits that the Examiner’s attempt to modify *Sockut* appears to constitute the type of impermissible hindsight reconstruction of Applicant’s claims, using Applicant’s claims as a blueprint, that is specifically prohibited by the M.P.E.P. and governing Federal Circuit cases.

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<sup>3</sup> If “common knowledge” or “well known” art is relied upon by the Examiner to combine or modify the references, Applicant respectfully requests that the Examiner provide a reference pursuant to M.P.E.P. § 2144.03 to support such an argument. If the Examiner relies on personal knowledge to supply the required motivation or suggestion to combine or modify the references, Applicant respectfully requests that the Examiner provide an affidavit supporting such facts pursuant to M.P.E.P. § 2144.03.

Accordingly, since the Examiner has not demonstrated the required teaching, suggestion, or motivation to modify or combine *Sockut* and *Barry* in the manner the Examiner proposes, Applicant respectfully submits that the Examiner's conclusions set forth in the Office Action do not meet the requirements set forth in the M.P.E.P. and the governing Federal Circuit case law for demonstrating a *prima facie* case of obviousness. Applicant respectfully submits that the rejection must therefore be withdrawn.

For at least these reasons, Applicant respectfully submits that the proposed *Sockut-Barry* combination is improper. Independent Claim 12 and its dependent claims are allowable for at least this additional reason.

### **3. Conclusions with Respect to Claim 12**

For at least these reasons, Applicant respectfully submits that the Examiner has not established a *prima facie* case of obviousness based on the proposed *Sockut-Barry* combination with respect to independent Claim 12. Thus, for at least these reasons, Applicant respectfully requests reconsideration and allowance of independent Claim 12 and its dependent claims.

#### **C. Independent Claim 17**

##### **1. The Proposed *Sockut-Barry* Combination Fails to Disclose, Teach, or Suggest Each and Every Limitation Recited in Independent Claim 17**

As with Claim 12 above, in response to Applicant's arguments from the previous Response, the Examiner states, "The same response to the argument for Independent claims 12 and 17 is considered to have been discussed above for claim 1." (Office Action at 10) However, Applicant made separate and different arguments for Claim 17 (as well as Claim 12). Claims 17 (and 12) recite at least certain limitations that are different than the limitations recited in Claim 1. Applicant respectfully submits that he is entitled to a response to those arguments in this Office Action. "Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and *answer the substance of it.*" M.P.E.P. ch. 707.07 (f) (emphasis added). Applicant

respectfully submits that, for Claim 17, the Examiner did not take note of Applicant's specific arguments or answer the substance of those separate arguments.

Applicant respectfully submits that if the Examiner intends to maintain these rejections, the Examiner must withdraw the finality of the current Office Action because the Examiner did not respond to the substance of Applicant's arguments with respect to Claim 17. Applicant recognizes that the Examiner is undoubtedly responsible for the examination of a large number of applications, placing inordinate constraints on the Examiner's time; however, Applicant submits that he should not be penalized for this fact and is still entitled to an examination of this Application in compliance with all applicable rules and guidelines. Applicant respectfully requests that the Examiner address Applicant's arguments in the next Office Action if the Examiner does not change or withdraw the rejection or, more appropriately, issue a Notice of Allowance for all claims.

In any event, Applicant notes that in rejecting Claim 17, the Examiner references the rejection of Claim 12. (Office Action at 6) Thus, Applicant cites and references the Examiner's rejection of Claim 12.

Applicant respectfully submits that the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest at least the following limitations recited in Claim 17:

- reading log records associated with a first database table of the one or more database tables;
- applying the log records to the backup copy without recovering the tablespace;
- building one or more table data pages from the backup copy having the log records applied;
- selecting one or more records from the one or more database table data pages, the one or more records belonging to the first database table; and
- updating the first database table with the one or more records selected from the one or more table data pages, while allowing access to the rest of the one or more database tables in the tablespace,
- wherein the first database table can be recovered without having to recover the tablespace.

For example, for at least certain reasons analogous to those discussed above with reference to independent Claim 12, the proposed *Sockut-Barry* combination fails to disclose,

teach, or suggest “reading log records associated with a first database table of the one or more database tables,” “applying the log records to the backup copy without recovering the tablespace,” “building one or more table data pages from the backup copy having the log records applied,” “selecting one or more records from the one or more database table data pages, the one or more records belonging to the first database table,” and “updating the first database table with the one or more records selected from the one or more table data pages, while allowing access to the rest of the one or more database tables in the tablespace,” as recited in Claim 17.

As another example, the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest “wherein the first database table can be recovered without having to recover the tablespace,” as recited in Claim 17. Given that the Examiner simply referenced the rejection of Claim 12 when rejecting Claim 17, it is not entirely clear what particular portion of *Sockut* or *Barry* the Examiner believes allegedly disclose this limitation of Claim 17. However, Applicant respectfully submits that none of the cited portions appear to disclose, teach, or suggest this limitation of Claim 17.

The Examiner acknowledges that *Sockut* does not teach an entire element of Claim 17, but the Examiner concludes that it would have been obvious to modify *Sockut* to include this element of Claim 12. (Office Action at 4) Applicant notes that in the rejection of Claim 12 (and thus Claim 17), the Examiner does not reference *Barry* as purportedly making up for this deficiency of *Sockut*, nor does the Examiner cite *Barry* as providing a purported teaching, suggestion, or motivation for modifying *Sockut* in the manner proposed by the Examiner. (Office Action at 4) For at least those reasons discussed below in Section II.C.2, Applicant respectfully submits that the Examiner’s proposed modifications to *Sockut* are improper.

For at least these reasons, Applicant respectfully submits that the proposed *Sockut-Barry* combination fails to disclose, teach, or suggest each and every limitation recited in independent Claim 17. Independent Claim 17 and its dependent claims are allowable for at least this reason.

**2. The Proposed Modifications to *Sockut* are Improper**

For at least those reasons discussed above in Section II.B.2, Applicant respectfully submits that the Examiner has not demonstrated the requisite teaching, suggestion, or motivation, either in the cited references or in the knowledge generally available to one of ordinary skill in the art at the time of the invention for modifying *Sockut* in the manner proposed by the Examiner. Applicant reiterates the above-discussed heavy burden incumbent on the Examiner for demonstrating a *prima facie* case of obviousness. For at least these reasons, Applicant respectfully submits that the proposed modifications to *Sockut* combination is improper. Independent Claim 17 and its dependent claims are allowable for at least this additional reason.

**3. Conclusions with Respect to Claim 17**

For at least these reasons, Applicant respectfully submits that the Examiner has not established a *prima facie* case of obviousness based on the proposed *Sockut-Barry* combination with respect to independent Claim 17. Thus, for at least these reasons, Applicant respectfully requests reconsideration and allowance of independent Claim 17 and its dependent claims.

**II. Allowable Subject Matter**

Applicant notes with appreciation the allowance of Claims 5 and 6. Applicant respectfully issues a statement commenting on the Examiner's statement of reasons for allowance of Claims 5 and 6 pursuant to 37 C.F.R. § 1.104. Applicant respectfully disagrees with the Examiner's reasons for allowance to the extent that they are inconsistent with applicable case law, statutes, and regulations. Furthermore, Applicant does not admit to any characterization or limitation of the claims by the Examiner, particularly any that are inconsistent with the language of the claims considered in their entirety and including all of their constituent limitations, or to any characterization of a reference by the Examiner. As just one example, Applicant does not concede that the limitations identified by the Examiner are the only distinctions between these claims and the cited references.



**III. No Waiver**

All of Applicant's arguments and amendments are without prejudice or disclaimer. Additionally, Applicant has merely discussed example distinctions from the reference cited by the Examiner. Other distinctions may exist, and Applicant reserves the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicant are sufficient to overcome the Examiner's rejections.

**Conclusion**


Applicant has made an earnest attempt to place this case in condition for allowance. For at least the foregoing reasons, Applicant respectfully requests full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Chad D. Terrell, Attorney for Applicant, at the Examiner's convenience at (214) 953-6813.

Although Applicant believes no fees are due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.  
Attorneys for Applicant



Chad D. Terrell  
Reg. No. 52,279

Date: October 11, 2007

Customer No. **05073**